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No. 99-1841

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SAMUEL M. SEPUYA, M.D. and RICHARD A. EDWARDS,

Petitioners,

v.

COMMUNITY HEALTH SYSTEMS OF SAN BERNARDINO, a California non-profit public benefit corporation, fka Arrowhead Health Care Systems, COMMUNITY HOSPITAL OF SAN BERNARDINO, a California non-profit public benefit corporation; CATHOLIC HEALTHCARE WEST, SOUTHERN CALIFORNIA, a California non-profit public benefit corporation; CATHOLIC HEALTHCARE WEST, a California non-profit public benefit corporation; *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS CATHOLIC HEALTHCARE WEST, SOUTHERN CALIFORNIA AND CATHOLIC HEALTHCARE WEST

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QUESTIONS PRESENTED FOR REVIEW

There are no legitimate questions for review presented in the Petition for a Writ of Certiorari ("Petition") filed by petitioners Samuel M. Sepuya, Harry L. Jacks, and Richard A. Edwards ("petitioners") in this matter. As explained further *infra*, petitioners misrepresent what occurred below, and essentially ignore the fact that their amended complaint was dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP") because ***they failed to state any actionable claim***. The suggestion in petitioners' Questions Presented for Review that the District Court incorrectly weighed the evidence and failed to impose an effective and adequate remedy makes no sense, because the District Court never was called upon to weigh the evidence or to impose a remedy. Rather, the District Court properly evaluated the claims pled in the amended complaint, found them all defective in ways that could not be cured by further amendment, and dismissed the case on that basis. The Ninth Circuit properly affirmed. The Ninth Circuit's unpublished decision in this matter does not come close to meeting any of the criteria listed in Supreme Court Rule 10, and thus review by this Court is unwarranted.

CORPORATE DISCLOSURE STATEMENT

Catholic Healthcare West Southern California and Catholic Healthcare West are California non-profit public benefit corporations. Catholic Healthcare West is the sole corporate member of Catholic Healthcare West Southern California. Catholic Healthcare West is sponsored by nine orders of women religious: the Auburn Regional Community of the Sisters of Mercy of the Americas; the Burlingame Regional Community of the Sisters of Mercy of the Americas; the Sisters of St. Dominic of the Congregation of the Most Holy Rosary of Adrian; the Daughters of Charity of St. Vincent de Paul, Province of the West; the Congregation of the Sisters of Charity of the Incarnate Word, Houston, Texas; the Sisters of the Third Order of St. Dominic of the Congregation of the Most Holy Name, San Rafael, California; the Congregation of Dominican Sisters of St. Catherine of Siena, Kenosha, Wisconsin; the Sisters of St. Francis of Penance and Christian Charity, St. Francis Province; and the Franciscan Sisters of the Sacred Heart, Frankfurt, Illinois.

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS AT ISSUE

Contrary to the assertion in the Petition, the Seventh Amendment is *not* at issue in this case, because a civil litigant whose case has been dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted is not entitled to any trial at all, jury or non-jury. The dismissal operates as an adjudication on the merits pursuant to Rule 41. Petitioners have not argued that FRCP Rules 12(b)(6) and 41 are unconstitutional or otherwise invalid.

REASONS FOR DENYING THE WRIT

There are no questions worthy of Supreme Court review presented by this case, and thus there is absolutely no reason whatever for this Court to grant the Petition. Petitioners' request to this Court for *certiorari* is as muddled as their many submissions below, and further demonstrates their total misunderstanding of the applicable law.

Petitioners' confused argument is premised on the erroneous notion that there was a summary judgment in this case. ("Since the summary judgment was improperly granted, the Petitioner's [sic] constitutional right to a jury trial was violated." Petition at 7. "This Honorable Court must grant this Petition for Certiorari so that it may clarify the standard for a motion for summary judgment where the RICO statute does not give an automatic jury trial right and the Seventh Amendment is applicable." Petition at 9.) There was no summary judgment. As indicated above and stated clearly in the District Court and Ninth Circuit decisions included with the Petition, the case was dismissed pursuant to FRCP Rule 12(b)(6), not Rule 56.

Petitioners also insist that they "proved" their case by submitting evidence, and that the District Court improperly weighed that evidence and placed an excessive burden of proof on them. (Petition at 5, 6, 9-10, 11.) Obviously, there was no "evidence" presented in this case, and nothing was "proved," because the case was dismissed on a 12(b)(6) motion. The District Court properly decided that motion by reviewing only the facts pled in the amended complaint. The prolixity of that document simply could not compensate for the fact that despite its 350-page length, the amended complaint was hopelessly incoherent and did not set forth the required elements of even one of petitioners' numerous causes of action.

Petitioners and their counsel apparently believe that it is somehow unconstitutional to apply Rule 12(b)(6) and Rule 41(b)[1] to them, because they have an inviolable right to trial by jury. That is just silly. Nothing in the Seventh Amendment or elsewhere in the Constitution even suggests that the federal judiciary cannot establish threshold requirements that civil litigants must meet before they are entitled to take up the courts' and other parties' time in trial, and in fact Congress expressly empowered the federal judiciary to do so. 28 U.S.C. § 2072; *Hanna v. Plumer*, 380 U.S. 460, 472, 85 S. Ct. 1136, 1144 (1965) ("the constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with congressional power to make rules governing the practice and pleading in those courts. . . .").

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1. Rule 41(b) provides, in pertinent part, that "a dismissal . . . other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

Petitioners subjected the twenty defendants in this case to the burden and expense of responding to two complaints, a motion for reconsideration, a motion for relief from judgment, and an appeal, all based on petitioners' impassioned but legally unfounded belief that the defendants should not have been permitted to engage in certain business transactions. The District Court and the Ninth Circuit rightly determined that petitioners were not entitled to pursue those claims. The Ninth Circuit's unpublished decision obviously creates no split in the circuits; indeed, it does not even raise any legitimate question of federal law.

CONCLUSION

The Petition is frivolous and should be denied.

Respectfully submitted,

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